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85-0343

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

C/ESD/OP

EXTENSION

NO.

DATE

28 January 1985

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DDA/MGMT
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29 JAN 1985

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2. ADDA

29 JAN 1985

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3. DDA

30 JAN 1985

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4.

Attached is a package covering the "importation and sale of personal automobiles and other personal property abroad" which has been forwarded by the Department of State to OMB. For your review and comments as appropriate. Response if any should be forwarded to OP/ESD/CAB, NLT 8 February. Negative response not required.

5.

6. SSA/DDA

(Rec'd separate sig)
1/29/85

FOR ACTION:

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8.

Suspense: 8 February 85

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100-73



United States Department of State

Washington, D.C. 20520

JAN 10 1985

STAT



Office of Personnel
Central Intelligence Agency


STAT

Washington, D.C. 20505

Dear John:

During April 1984 my predecessor, Mr. Ronald Rabens, forwarded for your review, comment and approval a draft Foreign Affairs Manual Circular (FAMC) concerning the importation and sale of personal automobiles and other personal property abroad. As a follow-up to that action, I am enclosing a copy of a draft Executive Order on this subject which was forwarded to OMB by the Department of State on December 12, 1984. We would appreciate your agency's positive consideration of this draft Order if OMB asks for your comments.

Sincerely,


Jerome F. Tolson, Jr.
Director
Allowances Staff

Enclosure:

As stated



DEPARTMENT OF STATE

Washington, D C. 20520

DEC 12 1984

Dear Mr. Stockman:

In accordance with Executive Order 11030, as amended, there are transmitted herewith seven copies of a proposed Executive Order which the Department recommends be approved and signed by the President.

The proposed Order would place restrictions on the sale of major personal property items owned by United States Government employees, civilian or military, who are serving outside the United States if that property were acquired through the exercise of a privilege derived from the employee's status as an employee of the United States. The premise of the Order is that no employee of the United States should profit personally by reason of his or her status as an employee of the United States.

Most Federal employees assigned to foreign countries enjoy some form of importation of personal property free of duty and import limits and many may also purchase items locally tax free. These benefits are based upon their official status as Federal employees. In a number of countries, exchange restrictions or import controls or other local conditions make items such as cars and major appliances very expensive. As a result, these items can be sold locally by Federal employees at a very large mark-up over what they paid for them. For a number of years, based upon State Department instructions, American ambassadors have limited the profits from such sales which could be retained by Federal employees under their jurisdiction. These regulations, however, did not cover all Federal employees assigned abroad and collecting and disposing of excess profits became an administrative burden. As a result, the foreign affairs agencies some time ago negotiated with the organizations representing their employees more relaxed standards. However, particularly when combined with conversion of local currency into dollars at artificial official rates, the gains now being made are unseemly. Recent experience, moreover, strongly indicates that there are other risks in present policy; for example, a junior officer was expelled from the Soviet Union for selling personal items illegally. There

The Honorable
David A. Stockman,
Director, Office of Management and Budget,
The White House.

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are obvious national security implications when we allow employees to use their official status to profiteer because they perhaps may slide into related illegal activities for which they could be blackmailed. It would be unfair to single out only employees of the foreign affairs agencies for strict standards in this regard, as well as unwise from a national security standpoint.

The draft Order would fix the responsibility for the approval of sales of personal property covered by the Order on the United States Chief of Mission or the United States area Military Commander in the foreign country or his or her designee for employees under their respective jurisdictions. Responsibility for disciplinary action would be fixed on the head of the employing agency or appropriate military commander.

The Department believes that an Executive Order is necessary to apply this policy fairly and uniformly to all United States employees abroad. It has been our experience that interagency regulations have not fully succeeded in doing this in the past. We also believe that if such an Order is not issued, the Congress will enact legislation to achieve this end in our next Authorization Act.

For your information, in view of the urgency of the situation, we have negotiated new interagency regulations on this subject. I do not believe that they can be fully effective or uniformly applied without the authority of an underlying Executive Order. They have been drafted to complement the proposed Order, and a copy of these regulations is enclosed.

Sincerely,



Davis R. Robinson
Legal Adviser

Enclosures:

1. Proposed Executive Order
2. Agreed regulations

Draft "2"
4/24/84

EXECUTIVE ORDER

Restrictions on the Sale of Personal Property by US Government Employees or Individuals Employed by US Government Agencies

By the authority vested in me as President of the United States of America, as Commander in Chief and by Section 301 of Title 3 of the United States Code, it is ordered as follows:

PART I - POLICY

SECTION 101. US citizen employees shall import, sell and export personal property, including automobiles, personal computers, audio and video systems, photographic equipment, major household appliances (including air conditioning units) and other high cost or high value items, in accordance with the laws, regulations and conventions of the foreign country to which they are assigned and with the applicable United States laws and regulations. The Chief of Mission or the United States Area Military Commander (if one exists) in each such foreign country, or a designee is authorized to approve all sales of personal property and to insure that any profits arising from the sale of this property are not retained by employees under their respective jurisdictions, as defined in Section 3927 of Title 22, United States Code.

PART II - STANDARDS OF CONDUCT

SECTION 201. The Chief of Mission or the United States Area Military Commander or a designee is responsible for establishing policies, rules and procedures, to assure compliance with international agreements and host government rules on the importation, the purchase under diplomatic privilege and the sale of personal property to insure that: (a) personal property, including automobiles, personal computers, audio and video systems, photographic equipment, major household appliances (including air conditioning units) and other high cost or high value items, imported into the foreign country of assignment by US citizen employees or purchased locally by them under diplomatic privileges must be for their bona fide personal use, (b) no such property can be sold within that country without the prior written approval of the Chief of Mission or the United States Area Military Commander or a designee, (c) no sale may be approved unless arrangements are made to limit retention of profits by the employee.

PART III - DISCIPLINARY ACTION

SECTION 301. In selling of personal property (as defined in Section 101 and 201), all US citizen employees must conduct themselves with propriety befitting their position as representatives of the United States abroad. Failure to adhere to prescribed policies and regulations relating to the sale of personal property will subject the employee to appropriate disciplinary action by the Chief of Mission, a designee, by the head of the employing agency or the appropriate military commander.

FOREIGN AFFAIRS MANUAL. CIRCULAR

Revision "6"
May 23, 1984

SUBJECT: Importation and Sale of Personal Automobiles and Other
Personal Property Abroad

I. SUMMARY -

These regulations revise existing policy governing the sale of personal property imported or purchased under diplomatic privileges for all U.S. Government civilian and uniformed personnel serving at U.S. Diplomatic Missions abroad, at prices producing profits.

II. PURPOSE -

The general purpose of this Circular is to prohibit the retention of profits from the sale of automobiles, personal computers, audio and video systems, photographic equipment, major household appliances (including air conditioning units), and other high cost or high value items by United States civilian and military personnel abroad.

Under local regulations approved by the Chief of Mission, sales may be made by an employee at a profit, but the profits shall not be retained by the employee.

These provisions apply to all United States civilian and military personnel, their spouses and dependents, regardless of agency, attached to or under the jurisdiction of United States Embassies, Missions, Consulates, Liaison Offices, Interest Sections, constituent posts, or any U.S. office abroad which is designated by the Secretary of State as diplomatic in nature.

III. POLICY -

A. Personal property, including automobiles, personal computers, audio and video systems, photographic equipment, major household appliances (including air conditioning units) and other high cost or high value items, imported by United States employees into foreign countries to which they are assigned, or purchased locally under diplomatic privileges, must be exported unless sold or otherwise disposed of in accordance with this Circular and such regulations as have been or may be promulgated.

B. The importation, sale or export of personal property, including automobiles, of United States employees must be in accordance with the laws, regulations and conventions of the host country.

C. Personal property, including automobiles, imported into countries by United States employees, or purchased locally under diplomatic privileges, must be for their bona fide personal use or that of their dependents, and not imported solely with the intent of sale or transfer.

D. Automobiles purchased for shipment to new posts of assignment should not be ostentatious in appearance.

E. United States employees who elect to sell rather than export their automobiles or other personal property may not retain an amount in excess of acquisition cost stated in terms of U.S. dollar equivalent amounts.

F. While contract employees normally do not have duty free entry or tax free purchase privileges on their personal property, to the extent that they do, the contracting agency hereafter shall include provisions in the contract applying the above policy to such contract employees.

IV. DEFINITIONS -

A. Chief of Mission means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned to be temporarily in charge of such a mission or office.

B. United States employees are defined as persons other than nationals of the receiving State, employed or sponsored by the U.S. government in a civilian or military capacity, regardless of agency, attached to or under the jurisdiction of a United States Embassy, Mission, Consulate, Liaison Office, Interest Section or constituent post as covered by the President's letter to Ambassadors dated September 23, 1981 (1 FAM 011.2).

C. Acquisition cost is defined as the initial price paid by the employee for such property, plus inland and overseas transportation (if not reimbursed by the U.S. Government), shipping insurance, taxes, customs, and capital improvements paid for by the employee. Acquisition costs do not include in-country insurance, replacement cost, maintenance and major or minor repairs. Interest paid on loans made to the employee for the express purpose of purchasing the property may be added in determining acquisition cost. Acquisition and other costs will be stated in terms of U.S. dollar equivalent amounts at the time of purchase or when incurred.

D. Excess proceeds are defined as the amount by which the sales price, including any non-monetary considerations, stated in U.S. dollars exceed the acquisition costs as stated in U.S. dollars (after payment of host country taxes if applicable).

E. Charitable recipients include bona fide charitable, educational, scientific, religious, philanthropic, governmental or similar recipients in the United States or abroad.

F. Personal property is defined as goods imported by an employee into a post, or purchased locally under diplomatic privileges, for personal use, such as automobiles, personal computers, audio and video systems, photographic equipment, major household appliances (including air conditioning units), and other household or personal items which have a high acquisition cost or a high value on the local market.

V. RESPONSIBILITY OF THE CHIEF OF MISSION -

Full responsibility for the administration of this policy rests with the Chief of Mission. The Chief of Mission or a designee will issue appropriate local regulations consistent with the policy prescribed herein, and with other applicable regulations, and ensure compliance by all U.S. Government employees at post. If any dispute arises regarding the applicability of this policy, regulations or interpretation to any particular sale, the Chief of Mission or a designee will promptly advise the Department (A/OPR) giving a full statement of the issues, or circumstances involved.

The Chief of Mission may:

- 1) limit or prohibit the importation of certain kinds of personal property.
- 2) designate categories of persons, including dealers to whom sales may or may not be made.

3) limit the conversion through U.S. Government facilities of local currency realized from the sale of personal property to a U.S. dollar amount equal to or less than the acquisition cost.

4) require the exportation of personal property at U.S. Government or employee expense under applicable travel or transportation regulations.

5) authorize the conversion through U.S. Government facilities of local currency realized from the sale of personal property to a U.S. dollar amount in excess of the acquisition cost provided that the recipient of such U.S. dollar amount gift is approved by the Chief of Mission in accordance with Section VI.B of this FAMC.

VI. PROPERTY DISPOSAL ALTERNATIVES -

Within the guidelines established by the Chief of Mission, all sales, exchanges or other disposition of personal property imported into the post, or purchased locally under diplomatic privileges, may be made only upon written receipt of approval of the items for sale, the terms of sale and disposition of excess proceeds, by the Chief of Mission or a designee.

No conversion or accommodation exchange will be provided to the employee unless written approval is obtained from the Chief of Mission or a designee, and the beneficiary of any excess proceeds is designated.

The Chief of Mission may establish a minimum property value limit below which the provisions of this Circular will not apply.

Unless extenuating circumstances dictate (as approved by the Chief of Mission), sale of personal property should not be authorized or undertaken prior to six months from the termination of an employee's scheduled home leave or departure from post.

A. Export Alternative

Employees may export their personal property at their own or at U.S. Government expense under pertinent travel or transportation regulations. They must export it if required to do so by local law or regulation, or rules established by the Chief of Mission.

B. Sales Alternatives

If approved by the Chief of Mission or a designee, sales of personal property may be made by the employee at an amount equal to or less than the U.S. dollar acquisition cost.

If approved by the Chief of Mission or a designee, sales may be made by the employee above their U.S. dollar acquisition costs but any excess proceeds will have to be disposed of in any one or a combination of the following ways:

-- by gift of all or part to a local charitable recipient approved by the Chief of Mission and recognized by the Host Government,

-- by gift of all or part to a U.S. charitable recipient recognized by the Internal Revenue Service.

-- by gift of all or part to the U.S. for the benefit of the Department of State (including the Foreign Service), as authorized by the Foreign Service Act of 1980, Chapter 2, Section 2201. (This authority is also available to USIA and the U.S. International Development Cooperation Agency.)

-- by gift of all or part to the U.S. for the benefit of the Department of State (including the Foreign Service) as authorized by the Foreign Buildings Act of 1926, Section 9, as amended.

-- by gift of all or part to any other agency of the United States Government authorized to accept such gifts,

-- by gift of all or part to an Employee Commissary, Welfare or Recreation Association, or to the Department's Central Commissary and Recreation Fund. (These gifts may also be made in accordance with the authorities of the Foreign Service Act of 1980, Chapter 2, Section 2201.)

VII. DISCIPLINARY ACTION.

Failure to adhere to prescribed policies and regulations relating to this Circular will subject the individuals, as outlined in Section IV-B to appropriate disciplinary action by the employing agency.

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VIII. INFORMATION IN POST REPORTS -

A summary of personal property importation and sale regulations prepared at the post shall be included in the Post Report of all agencies so that employees have this guidance as they prepare for assignment to the post. It shall include information on types of automobiles, other household equipment and personal property that are acceptable to the post.

IX. NOTICE TO EMPLOYEES -

This Circular and pertinent Post Reports shall be brought to the attention of all employees as they prepare for assignment abroad.

X. PREVIOUS ISSUANCES -

Prior issuances on this subject are superseded: 3 FAM 620 (Section 10.735-206(b)(4) of 22 U.S.C.); 2 FAM 225.3 and 6 FAM 165.7. Posts will take action to bring local regulations into conformance with this Circular immediately upon receipt.

XI. EMPLOYEE RESPONSIBILITIES WITH REGARDS TO U.S. TAXES -

It is the responsibility of the employee to become familiar with and honor U.S. tax obligations incurred as a result of sale of property.

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